



**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION**

**REQUEST FOR PROPOSALS
FOR
DATA ENTRY SERVICES**

**RFP Number: 317.03-110
October 27, 2003**

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1 INTRODUCTION

1.1 Statement of Purpose

The purpose of this Request for Proposals (RFP) is to define the State's minimum requirements, solicit proposals, and gain adequate information by which the State may evaluate the services offered by Proposers.

The State of Tennessee, Department of Finance & Administration, hereinafter referred to as the State, intends to secure a contract for Data Entry Services for the various State agencies. This work will be on an overflow basis of work, which cannot be performed by Tennessee Rehabilitative Initiative in Correction (TRICOR).

On occasions where State agencies have data entry work to be performed that cannot or should not be performed by TRICOR, the contractor for this work will perform data entry functions and return the data in an electronic format as agreed upon by the State Agency and the Contractor.

Depending on the content of the data and the State agency for which the data is to be keyed, the State may require the Contractor to sign one or more "HIPAA Business Associate Agreements." A copy of the agreement appears in RFP Attachment 9.7.

1.2 Scope of Service

Section A of the *pro forma* contract, included in Section 8 of this RFP, details the scope of services and deliverables that the State requires.

The *pro forma* contract also includes the terms and conditions required by the State.

1.3 Contract Duration

The State intends to enter into a contract with an effective period of February 1, 2004, through January 31, 2007.

The State reserves the right to extend this Contract for an additional two years of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least sixty (60) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract and proposal.

1.4 Letter of Intent to Propose

A letter indicating a vendor's intent to respond to this RFP with a proposal should be sent to the RFP Coordinator (refer to Section 3.1) no later than the *Letter of Intent to Propose* deadline date detailed in the Section 2, RFP Schedule of Events. *Letters of Intent to Propose* may be delivered by facsimile transmission. Vendors may withdraw their *Letters of Intent to Propose* at any time before the deadline for submitting a proposal.

The following information should be included in the *Letter of Intent to Propose*:

Vendor Name
Name and Title of Vendor Main Contact
Address, Telephone Number, and Facsimile Number of Vendor Main Contact
Signed Statement of Intent to Propose

Submittal of a *Letter of Intent to Propose*, by the specified deadline, is not a prerequisite for submitting a proposal, but it is necessary to ensure a vendor's receipt of RFP amendments and other communications regarding the RFP.

1.5 Proposal Deadline

Proposals shall be submitted no later than the Proposal Deadline time and date detailed in the Section 2, RFP Schedule of Events. Proposers shall respond to the written RFP and any exhibits, attachments, or amendments. A Proposer's failure to submit a proposal as required before the deadline shall cause the proposal to be disqualified.

Proposers assume the risk of the method of dispatch chosen. The State assumes no responsibility for delays caused by any delivery service. Postmarking by the due date shall not substitute for actual proposal receipt by the State. Late proposals shall not be accepted nor shall additional time be granted to any potential Proposer.

Proposals may not be delivered orally, by facsimile transmission, or by other telecommunication or electronic means.

1.6 Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the State's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the State or in the employment practices of the State's contractors. Accordingly, all vendors entering into contracts with the State shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

The State has designated the following to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and applicable federal regulations:

Buddy Lea, Director of Resource Development and Support
12th Floor, Wm. R. Snodgrass Building
312 8th Avenue North, Nashville, Tennessee 37243
(615) 741-7662

1.7 Assistance to Proposers With a Disability

Proposers with a disability may receive accommodation regarding the means of communicating this RFP and participating in this procurement process. Proposers with a disability should contact the RFP Coordinator to request reasonable accommodation no later than the deadline for accommodation requests detailed in the Section 2, RFP Schedule of Events.

2 RFP SCHEDULE OF EVENTS

The following RFP Schedule of Events represents the State's best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 8:00 a.m. and 4:30 p.m., Central Time.

The State reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the Schedule of Events shall be provided to all vendors that submitted a *Letter of Intent to Propose*.

	EVENT	DATE	TIME
1	State Issues RFP	10/27/2003	
2	Deadline for Proposers with a Disability to Make Accommodation Requests	11/3/03	
3	Deadline for <i>Letter of Intent to Propose</i>	11/6/03	
4	Deadline for Written Comments	11/14/03	
5	State Issues Responses to Written Comments	11/21/03	
6	Deadline for Submitting a Proposal <u>and</u> State Opens Technical Proposals	12/10/03	1:00 PM
7	State Completes Technical Evaluations	12/31/03	
8	State Opens Cost Proposal	1/2/04	9:00 AM
9	State Completes Cost Evaluations	1/2/04	
10	State Sends a written Evaluation Notice to Proposers <u>and</u> State Opens RFP Files for Public Inspection	1/7/04	9:00 AM
11	Conclusion of Contract Negotiation, and Contract Signing	1/21/04	
12	Anticipated Contract Start Date	2/1/04	

3 GENERAL REQUIREMENTS AND INFORMATION

3.1 RFP Coordinator

The following RFP Coordinator shall be the main point of contact for this RFP.

Travis Johnson
Department of Finance and Administration
18th Floor, Wm. R. Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, Tennessee 37243-1510
(615) 741-5727
(615) 741-4589 Fax
Travis.Johnson@state.tn.us

3.2 RFP Number

The State has assigned the following RFP identification number that must be referenced in all communications regarding the RFP:

RFP-317.03-110

3.3 Communications Regarding the RFP

- 3.3.1 Upon release of this RFP, all vendor communications concerning this procurement must be directed to the RFP Coordinator. Unauthorized contact regarding the RFP with other State employees of the procuring state agency may result in disqualification.
- 3.3.2 All communications should be in writing to the RFP Coordinator. Any oral communications shall be considered unofficial and nonbinding on the State. Written Comments, including questions and requests for clarification, must cite the subject RFP number. The RFP Coordinator must receive these written requests by the deadline specified in the RFP Schedule of Events.
- 3.3.3 Any communication regarding this RFP sent by facsimile transmission must also be sent by United States mail on the same date.
- 3.3.4 The State shall respond in writing to written communications. Such response shall constitute an amendment to the RFP. Only written responses to written communications shall be considered official and binding upon the state. The State reserves the right, at its sole discretion, to determine appropriate and adequate responses to written comments, questions, and requests for clarification.
- 3.3.5 The State shall mail copies of its written responses to written comments, to all vendors submitting a *Letter of Intent to Propose*.
- 3.3.6 Any data or factual information provided by the State shall be deemed for informational purposes only, and if a proposer relies on said factual information it should either:
- a) independently verify the information; or
 - b) obtain the State's written consent to rely thereon.

3.4 Required Review and Waiver of Objections by Proposers

Proposers should carefully review this RFP and all attachments, including but not limited to the *pro forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called “comments”). Comments concerning RFP objections must be made in writing and received by the State no later than the Deadline for Written Comments detailed in the Section 2, RFP Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made.

Protests based on any objection shall be considered waived and invalid if these comments and objections have not been brought to the attention of the State, in writing, by the Deadline for Written Comments.

3.5 Proposal Submittal

- 3.5.1 Proposers shall respond to this RFP with a Technical Proposal and a Cost Proposal. No pricing information shall be included in the Technical Proposal.

Inclusion of Cost Proposal amounts in the Technical Proposal shall make the proposal nonresponsive.

One (1) original and five (5) copies of the Technical Proposal shall be submitted to the State in a sealed package and be clearly marked:

“Technical Proposal in Response to RFP-317.03-110 -- Do Not Open”

One (1) Cost Proposal shall be submitted to the State as a separate, sealed package and clearly marked:

“Cost Proposal in Response to RFP-317.03-110 -- Do Not Open”

If the separately sealed proposals, marked as required above, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and must be clearly marked:

“Contains Separately Sealed Technical and Cost Proposals”

- 3.5.2 All proposals must be submitted to the RFP Coordinator at the following address by the date and time identified as the Deadline for Submitting a Proposal in the RFP Schedule of Events.

Department of Finance and Administration
Office for Information Resources
18th Floor, Wm. R. Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, Tennessee 37243-1510

3.6 Proposal Preparation Costs

The State shall not pay any costs associated with the preparation, submittal, or presentation of any proposal.

3.7 Proposal Withdrawal

To withdraw a proposal, the vendor must submit a written request, signed by an authorized representative, to the RFP Coordinator. After withdrawing a previously submitted proposal, the vendor may submit another proposal at any time up to the deadline for submitting proposals.

3.8 Proposal Amendment

The State shall not accept any amendments, revisions, or alterations to proposals after the deadline for proposal submittal unless such is formally requested, in writing, by the State.

3.9 Proposal Errors

Proposers are liable for all errors or omissions contained in their proposals. Proposers shall not be allowed to alter proposal documents after the deadline for submitting a proposal.

3.10 Incorrect Proposal Information

If the state determines that a proposer has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the proposer knew or should have known was materially incorrect, that proposal shall be determined non-responsive, and the proposal shall be rejected.

3.11 Prohibition of Proposer Terms and Conditions

A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the State, at its sole discretion, may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected.

3.12 Assignment and Subcontracting

3.12.1 The Contractor may not subcontract, transfer, or assign any portion of the contract without prior, written approval from the State. Each subcontractor must be approved in writing by the State. The substitution of one subcontractor for another may be made only at the discretion of the State and with prior, written approval from the State.

3.12.2 Notwithstanding the use of approved subcontractors, the Proposer, if awarded a contract under this RFP, shall be the prime contractor and shall be responsible for all work performed.

3.13 Right to Refuse Personnel

The State reserves the right to refuse, at its sole discretion, any subcontractors or any personnel provided by the prime contractor or its subcontractors.

3.14 Proposal of Alternate Services

Proposals of alternate services (*i.e.*, proposals that offer something different from that requested by the RFP) shall be considered nonresponsive and rejected.

3.15 Proposal of Additional Services

If a Proposer indicates an offer of services in addition to those required by and described in this RFP, these additional services may be added to the contract before contract signing at the sole discretion of the State.

The cost for any such additional services must be incorporated into the required cost amount(s) provided in the Cost Proposal so that all proposals may be equitably evaluated. The Proposer shall **not** propose unrequested rates as separate, additional rates for additional services. (Refer to Section 5.3 of this RFP for Cost Proposal requirements.)

3.16 Independent Price Determination

- 3.16.1 A proposal shall be disqualified and rejected by the State if the price in the proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Proposer, a State employee, or any competitor.
- 3.16.2 The Proposer is prohibited from submitting more than one proposal. Submittal of more than one proposal shall result in the disqualification of the Proposer.
- 3.16.3 The Proposer is prohibited from submitting multiple proposals in a different form (i.e., as a prime contractor and as a subcontractor to another prime contractor). Submittal of multiple proposals in a different form may result in the disqualification of all Proposers associated with a multiple proposal.
- 3.16.4 Should any such prohibited action detailed in Sections 3.16.1, 3.16.2, and 3.16.3 be detected any time during the term of the contract, such action shall be considered a material breach and grounds for contract termination.

3.17 Insurance

The apparent successful Proposer may be required to provide proof of adequate worker's compensation and public liability insurance coverage before entering into a contract. Additionally, the State may, at its sole discretion, require the apparent successful Proposer to provide proof of adequate professional malpractice liability or other forms of insurance. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the State shall be in form and substance acceptable to the State.

3.18 Licensure

Before a contract pursuant to this RFP is signed, the Vendor must hold all necessary, applicable business and professional licenses. The State may require any or all Proposers to submit evidence of proper licensure.

3.19 Conflict of Interest and Proposal Restrictions

- 3.19.1 By submitting a proposal, the Proposer certifies that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the procurement under this RFP.

Notwithstanding this restriction, nothing in this RFP shall be construed to prohibit a state agency or other governmental entity from making a proposal, being considered for award, or being awarded a contract under this RFP.

- 3.19.2 State agencies shall not contract with an individual who is, or within the past six months has been, an employee of the State of Tennessee. An individual shall be deemed a State employee until such time as all salary, termination pay, and compensations representing annual or compensatory leave have been paid by the State. A contract with a company in

which a controlling interest is held by a State employee shall be considered to be a contract with said individual and shall be prohibited.

- 3.19.3 Any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this RFP or its scope of services shall be considered to have been given information that would afford an unfair advantage over other Proposers, and said individual, company, or other entity may not submit a proposal in response to this RFP.

3.20 RFP Amendment and Cancellation

The State reserves the unilateral right to amend this RFP in writing at any time. The State also reserves the right to cancel or reissue the RFP at its sole discretion. If an amendment is issued it shall be provided to all vendors submitting a *Letter of Intent to Propose*. Proposers shall respond to the final written RFP and any exhibits, attachments, and amendments.

3.21 Right of Rejection

- 3.21.1 The State reserves the right, at its sole discretion, to reject any and all proposals or to cancel this RFP in its entirety.
- 3.21.2 Any proposal received which does not meet the requirements of this RFP may be considered to be nonresponsive, and the proposal may be rejected. Proposers must comply with all of the terms of this RFP and all applicable State laws and regulations. The State may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP.
- 3.21.3 Proposers may not restrict the rights of the State or otherwise qualify their proposals. If a Proposer does so, the State may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected.
- 3.21.4 The State reserves the right, at its sole discretion, to waive variances in technical proposals provided such action is in the best interest of the State. Where the State waives minor variances in proposals, such waiver does not modify the RFP requirements or excuse the proposer from full compliance with the RFP. Notwithstanding any minor variance, the State may hold any Proposer to strict compliance with the RFP.

3.22 Disclosure of Proposal Contents

All proposals and other materials submitted in response to this RFP procurement process become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, shall be held in confidence during the evaluation process. Upon the completion of the evaluation of proposals, indicated by public release of an Evaluation Notice, the proposals and associated materials shall be open for review by the public in accordance with **Tennessee Code Annotated**, Section 10-7-504(a)(7). By submitting a proposal, the Proposer acknowledges and accepts that the full contents of the proposal and associated documents shall become open to public inspection.

3.23 Severability

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and, the rights and obligations of the State and Proposers shall be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

4 SPECIAL REQUIREMENTS

4.1 Joint Ventures

Proposals from joint ventures are acceptable. However, such proposal should be designed to minimize any administrative burden on the State as a result of the participation of multiple entities. Proposals from joint ventures shall clearly set forth the respective responsibilities and functions each principal to the joint venture would perform if awarded the contract. If submitting a proposal as a joint venture, the Proposer must submit a copy of the joint venture agreement(s) that identifies the principals involved as well as their rights and responsibilities regarding performance and payment. The proposal transmittal letter must be signed by all principals and include all required information. The Proposer must submit only one transmittal letter; do not submit a separate letter for each entity involved.

If the joint venture is awarded the contract, the State shall require, at a minimum, the following:

- 4.1.1 All principals to the joint venture must sign the contract with the State;
- 4.1.2 The joint venture must designate a single point of contact who shall have the authority to represent all principals in the joint venture;
- 4.1.3 All principals to the joint venture shall be jointly and severally liable to the State for performance of the contract. Upon any default of a principal to the joint venture, the remaining principal(s) shall take all appropriate actions to ensure that services are uninterrupted and shall be responsible for complying with all contract requirements, at no additional cost to the State.

4.2 Location and Work Space

The work under this RFP is to be performed, completed, and managed at Contractor's location. The State SHALL NOT provide work-space for the Contractor. All work performed on the State's premises shall be completed during the State's standard business hours.

5 PROPOSAL FORMAT AND CONTENT

5.1 General Proposal Requirements

- 5.1.1 The State discourages lengthy and costly proposals. Proposals should be prepared simply and economically and provide a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content.
- 5.1.2 Proposers must follow all formats and address all portions of the RFP set forth herein providing all information requested. Proposers may retype or duplicate any portion of this RFP for use in responding to the RFP, provided that the proposal clearly addresses all of the State's information requirements.
- 5.1.3 Proposers must respond to every subsection under the Technical Proposal and Cost Proposal sections below. Proposers must label each response to RFP requirements with the section and subsection numbers associated with the subject requirement in this RFP (e.g., the response to the third requirement of the Proposal Transmittal Letter would be labeled 5.2.1.3).

Failure to follow the specified format, to label the responses correctly, or to address all of the subsections may, at the State's sole discretion, result in the rejection of the Proposal.

Proposals must not contain extraneous information. All information presented in a Proposal must be relevant in response to a requirement of this RFP, must be clearly labeled, and, if not incorporated into the body of the Proposal itself, must be referenced to and from the appropriate place within the body of the Proposal. Any information not meeting these criteria shall be deemed extraneous and shall in no way contribute to the evaluation process.

- 5.1.4 Proposals shall be prepared on standard 8 1/2" x 11" paper. Foldouts containing charts, spread sheets, and oversize exhibits are permissible. All responses, as well as any reference material presented, must be written in English. All monetary amounts must be detailed in United States currency. All proposal pages must be numbered.
- 5.1.5 Proposers shall divide their responses to this RFP into a Technical Proposal and a Cost Proposal and submit them in accordance with Section 3.5 of this RFP by the Deadline for Submitting a Proposal in the RFP Schedule of Events.

Cost Proposal and pricing information shall **not** be included in the Technical Proposal. Inclusion of Cost Proposal dollar amounts in the Technical Proposal shall make the proposal nonresponsive and the proposal shall be rejected.

5.2 Technical Proposal

The Technical Proposal shall be divided into the following sections:

- Proposal Transmittal Letter;
- Mandatory Proposer Qualifications;
- General Proposer Qualifications and Experience; and
- Technical Approach.

If a proposal fails to detail and address each of the requirements detailed herein, the State may determine the proposal to be nonresponsive and reject it.

- 5.2.1 Proposal Transmittal Letter. The Technical Proposal must provide a written transmittal and offer of the proposal in the form of a standard business letter. The Proposal Transmittal Letter shall reference and respond to the following subsections in sequence and attach corresponding documentation as required. Each proposal must meet the Proposal Transmittal Letter requirements and provide all required documentation. A Proposal Transmittal Letter is mandatory, and failure to provide the information as required may result in the proposal being considered nonresponsive and rejected.
- 5.2.1.1 The letter shall be signed by a company officer empowered to bind the proposing vendor to the provisions of this RFP and any contract awarded pursuant to it; if said individual is not the company president, the letter shall attach evidence showing authority to bind the company.
- 5.2.1.2 The letter shall state that the proposal remains valid for at least ninety (90) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the State.
- 5.2.1.3 The letter shall provide the complete name and Social Security Number of the individual or the legal entity name and Federal Employer Identification Number of the firm making the proposal.
- 5.2.1.4 The letter shall provide the name, mailing address, telephone number, and email address of the person the State should contact regarding the proposal.
- 5.2.1.5 The letter shall state whether the Proposer intends to use subcontractors — if so, clearly identify the names of the subcontractors along with complete mailing addresses and the scope and portions of the work the subcontractors shall perform. (NOTE: The Contractor must obtain written approval from the State prior to the use of any subcontractors.)
- 5.2.1.6 The letter shall state whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict. The State reserves the right to cancel an award if any interest disclosed from any source could either give the appearance of a conflict of interest or cause speculation as to the objectivity of the offeror. Such determination regarding any questions of conflict of interest shall be solely within the discretion of the State.
- 5.2.2 Mandatory Proposer Qualifications. Technical Proposals shall provide responses and documentation, as required, that indicate that the Proposer has met the Mandatory Proposer Qualifications requirements. Any Proposal which does not meet the mandatory requirements and provide all required documentation may be considered nonresponsive, and the proposal may be rejected.

Technical Proposals shall provide the following information (referencing the subsections in sequence):

- 5.2.2.1 written confirmation that the Proposer shall comply with all of the provisions in this RFP and shall accept all terms and conditions set out in the *pro forma* contract in Section 8 of this RFP. (NOTE: If the Proposal fails to provide said confirmation without exception or qualification, the State, at its sole discretion, may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected.)
- 5.2.2.2 written certification and assurance of the Proposer's compliance with:
- a) the laws of the State of Tennessee;
 - b) Title VI of the federal Civil Rights Act of 1964;
 - c) Title IX of the federal Education Amendments Act of 1972;
 - d) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;

- e) the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- f) the condition that the submitted proposal was independently arrived at, without collusion, under penalty of perjury; and,
- g) the condition that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the Procurement under this RFP.

(Use Attachment 9.1, Certification of Compliance)

5.2.2.3 documentation of financial responsibility and stability; said documentation shall include:

5.2.2.3.1 a current written bank reference, in the form of a standard business letter, indicating that the proposer's business relationship with the financial institution is in positive standing

5.2.2.3.2 two current written, positive credit references, in the form of standard business letters, from vendors with which the proposer has done business; in lieu of such, documentation of a positive credit rating determined by a accredited credit bureau within the last 6 months, and

5.2.2.3.3 a copy of a valid certificate of insurance indicating liability insurance in the amount of at least One Million Dollars (\$1,000,000).

5.2.3 General Proposer Qualifications and Experience. Technical Proposals shall provide the following information (referencing the subsections in sequence) to evidence the Proposer's experience in delivering services similar to those required by this RFP:

5.2.3.1 a brief, descriptive statement indicating the Proposer's credentials to deliver the services sought under this RFP;

5.2.3.2 a brief description of the Proposer's background and organizational history;

5.2.3.3 years in business;

5.2.3.4 a brief statement of how long the Proposer has been performing the services required by this RFP;

5.2.3.5 location of offices;

5.2.3.6 a description of the Proposer organization's number of employees, longevity, client base;

5.2.3.7 whether there have been any mergers, acquisitions, or sales of the Proposer company within the last ten years (if so, an explanation providing relevant details);

5.2.3.8 form of business (*i.e.*, individual, sole proprietor, corporation, non-profit corporation, partnership, joint venture, limited liability company, *et cetera*);

5.2.3.9 a statement as to whether the Proposer or any of the Proposer's employees, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled *nolo contendere* to any felony; and if so, an explanation providing relevant details;

5.2.3.10 a statement as to whether there is any pending litigation against the Proposer; and if such litigation exists, attach an opinion of counsel as to whether the pending litigation will impair the Proposer's performance in a contract under this RFP;

- 5.2.3.11 a statement as to whether, in the last ten years, the Proposer has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors; and if so, an explanation providing relevant details;
- 5.2.3.12 an organizational chart highlighting the key people who shall be assigned to accomplish the work required by this RFP and illustrating the lines of authority and designate the individual responsible for the completion of each service component and deliverable of the RFP;
- 5.2.3.13 a narrative description of the proposed project team, its members, and organizational structure;
- 5.2.3.14 customer references for similar projects representing both three of the larger accounts currently serviced by the vendor and three completed projects— each reference must include:
- a) the company name and business address;
 - b) the name, title, and telephone number of the company contact knowledgeable about the project work; and
 - c) a brief description of the service provided and the period of service.
- 5.2.3.15 a list, if any, of all current contractual relationships with the State of Tennessee and all those completed within the previous five year period— the list must include:
- a) the contract number;
 - b) the contract term;
 - c) the procuring state agency for each reference; and
 - d) the name, title, and telephone number of the State contact knowledgeable about the project work.
- (NOTE: Current or prior contracts with the State are NOT a prerequisite to being awarded the maximum available points for the Proposer Qualifications and Experience category. The existence of such current or prior contractual relationships will not automatically result in the addition or deduction of evaluation points. Any such current or prior contractual relationships, like those detailed pursuant to Section 5.2.3.15., shall be generally considered in awarding Proposer Qualifications and Experience category points.)
- 5.2.3.16 Provide documentation of Proposer commitment to diversity as represented by its business strategy, business relationships, and workforce — this documentation should detail:
- 5.2.3.16.1 a description of the Proposer's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability and small business enterprises;
- 5.2.3.16.2 a listing of the Proposer's current contracts with business enterprises owned by minorities, women, persons with a disability and small business enterprises, including the following information:
- contract description and total dollar value
 - contractor name and ownership characteristics (*i.e.*, ethnicity, sex, disability)
 - contractor contact and telephone number
- 5.2.3.16.3 an estimate of the level of participation by business enterprises owned by minorities, women, persons with a disability and small business enterprises in a contract awarded to the Proposer pursuant to this RFP, including the following information:

- participation estimate (expressed as a percent of the total contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics)
- descriptions of anticipated contracts
- names and ownership characteristics (*i.e.*, ethnicity, sex, disability) of anticipated subcontractors and supply contractors anticipated

5.2.3.16.4 the percent of the Proposer's total current employees by ethnicity, sex, and disability.

Firms who demonstrate diversity within their programs and policies are assisting the State in achieving its goals in building a more reflective marketplace of the community within this state. Proposal evaluations will recognize the positive qualifications and experience of a Proposer that does business with enterprises owned by minorities, women, persons with a disability and small business enterprises and that offers a diverse workforce to meet service needs.

5.2.4 Technical Approach. The Proposer shall describe the vendor's plans and approach for accomplishing the work requested. The information provided shall be in enough detail to enable the State to ascertain the Proposer's understanding of the effort to be accomplished and should outline the steps in the total service proposed. Technical Proposals shall provide the following narrative information (referencing the subsections in sequence) to evidence the suitability of the Proposer's technical approach to delivering the services sought under this RFP:

5.2.4.1 Proposers must provide a comprehensive narrative, captioned "Project Understanding," that illustrates the vendor's understanding of the State's requirements and project schedule.

5.2.4.2 Proposers must provide a comprehensive narrative, captioned "Project Approach," that illustrates how the Proposer will complete the scope of services, accomplish required objectives, and meet the State's project schedule.

5.2.4.3 Proposers must provide a comprehensive narrative, captioned "Project Management," that illustrates how the Proposer will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State's project schedule.

5.3 Cost Proposal

5.3.1 The Cost Proposal shall be submitted to the State in a separate, sealed package from the Technical proposal.

5.3.2 The Cost Proposal required format is provided in Attachment 9.2, and the Cost Proposal must be recorded on an exact duplicate thereof.

5.3.3 The Cost Proposal shall specifically record the exact cost amounts proposed in the appropriate space as required by Attachment 9.2. Said proposed cost shall incorporate all cost for the proposed scope of services for the total contract period.

5.3.4 The Cost Proposal shall record only the proposed cost as required, and shall not record any other rates, amounts, or information. It shall not record any text that could be construed as a qualification of the cost amounts proposed. If the Proposer fails to specify the Cost Proposal as required, the State shall determine the proposal to be nonresponsive and reject it.

5.3.5 The Proposer must sign and date the Cost Proposal.

- 5.3.6 The Proposer shall propose the Costs in accordance with detailed instructions given in RFP Attachment 9.2.

6.1 Proposal Evaluation Categories and Maximum Points

The categories that shall be considered in the evaluation of proposals are Qualifications and Experience, Technical Approach, and Cost. The maximum points that shall be awarded for each of these categories are:

CATEGORIES	MAXIMUM POINTS POSSIBLE
General Proposer Qualifications and Experience	35
Technical Approach	30
Cost Proposal	35

6.2 Proposal Evaluation Process

6.2.1 The evaluation process is designed to award the procurement not necessarily to the Proposer of least cost, but rather to the Proposer with the best combination of attributes based upon the evaluation criteria. Therefore, proposals are evaluated against the evaluation criteria in this RFP and NOT against other proposals.

6.2.2 The RFP Coordinator shall manage the proposal evaluation process and maintain proposal evaluation records. A Proposal Evaluation Team made up of three or more State employees shall be responsible for evaluating proposals.

6.2.3 All proposals shall be reviewed by the RFP Coordinator to determine compliance with basic proposal requirements as specified in this RFP. If the RFP Coordinator determines that a proposal may be missing one or more such requirements, the Proposal Evaluation Team shall review the proposal to determine:

- a) if it meets requirements for further evaluation;
- b) if the State shall request clarification(s) or correction(s); or
- c) if the State shall determine the proposal nonresponsive and reject it.

6.2.4 Elaine S. Anderson, CPA, shall provide an analysis of each Proposer's documentation of financial resources (RFP Section 5.2.2.3). The analysis shall result in a clear, written determination provided to the RFP Coordinator regarding whether each proposer's detailed documentation of financial resources indicated apparent financial strength, stability, and resources to provide the subject scope of services as required.

If a proposer's documentation of financial resources is not clearly determined to indicate apparent financial strength and resources to provide the subject scope of services as required, the Proposal Evaluation Team shall review the proposal to determine if the State shall:

- a) request clarification(s) or correction(s); or
- b) determine the proposal nonresponsive and reject it.

6.2.5 The Proposal Evaluation Team shall evaluate responsive proposals. Each evaluator shall score the General Proposer Qualifications and Experience section and the Technical

Approach section of each proposal. The evaluation scoring shall use the pre-established evaluation criteria and weights set out in this RFP. Each evaluator shall use only whole numbers for scoring proposals. (Refer to Attachment 9.3, Technical Proposal Evaluation Format).

- 6.2.6 The State reserves the right, at its sole discretion, to request clarifications of technical proposals or to conduct discussions for the purpose of clarification with any or all Proposers. The purpose of any such discussions shall be to ensure full understanding of the proposal. Discussions shall be limited to specific sections of the proposal identified by the State and, if held, shall be after initial evaluation of Technical Proposals. If clarifications are made as a result of such discussion, the Proposer shall put such clarifications in writing.
- 6.2.7 Upon completion of Technical Proposal scoring by the Proposal Evaluation Team, the RFP Coordinator shall calculate the average Technical Proposal score for each proposal.
- 6.2.8 After opening the Cost Proposals, the RFP Coordinator shall calculate scores for each Cost Proposal. The Cost Evaluation score shall be based on the proposed cost for evaluation amounts indicated by the Cost Proposal. The amounts shall be used in the following formula to determine the points a Proposer shall receive for the Cost Proposal:

$$\frac{\text{lowest proposed cost for evaluation}}{\text{proposed cost for evaluation being evaluated}} \times \text{maximum cost points} = \text{SCORE of cost proposal being evaluated}$$

(Refer to Attachment 9.4, Cost Proposal Evaluation Format, for details.)

- 6.2.9 The RFP Coordinator shall combine the average Technical Evaluation scores with the Cost Evaluation scores for each Proposer. (Refer to Attachment 9.5, Proposal Score Summary Matrix).
- 6.2.10 All proposal evaluation calculations shall result in numbers rounded to the nearest two decimal places (e.g., 9.99).

6.3 Contract Award Process

- 6.3.1 The RFP Coordinator shall forward results from the proposal evaluation process to the head of the procuring agency for consideration.
- 6.3.2 The State reserves the right to make an award without further discussion of any proposal submitted. There shall be no best and final offer procedure. Therefore, each proposal should be initially submitted on the most favorable terms the vendor can offer.
- 6.3.3 After the evaluation of proposals and final consideration of all pertinent information available, the head of the procuring agency shall issue a written Evaluation Notice to all Proposers. The notice shall identify the apparent best evaluated Proposer. The notice shall not create rights, interests, or claims of entitlement in the apparent best evaluated Proposer or any vendor. (Refer to Attachment 9.6 for a sample notice).
- 6.3.4 The RFP files shall be made available for public inspection.
- 6.3.5 The State reserves the right, at its sole discretion, to negotiate with the apparent best evaluated Proposer subsequent to the Evaluation Notice.
- 6.3.6 The apparent best evaluated Proposer shall be prepared to enter into a contract with the State which shall be substantially the same as the *pro forma* contract included in Section 8 of this RFP. Notwithstanding, the State reserves the right to add terms and conditions, deemed to be

in the best interest of the State, during final contract negotiations. Any such terms and conditions shall be within the scope of the RFP and shall not affect the basis of proposal evaluations.

- 6.3.7 If a Proposer fails to sign and return the contract drawn pursuant to this RFP and final contract negotiations within 14 days of its delivery to the Proposer, the State may determine, at its sole discretion, that the Proposer is nonresponsive to the terms of this RFP and reject the proposal.
- 6.3.8 If the State determines that the apparent best evaluated Proposer is nonresponsive and rejects the proposal after opening Cost Proposals, the RFP Coordinator shall re-calculate scores for each responsive Cost Proposal and award the Contract in accordance with the requirements of 6.2.8., *et seq.*, above.
- 6.3.9 Contract award shall be subject to the contract approval of all appropriate State officials in accordance with applicable State laws and regulations.

7.1 Contractor Registration

Contractor Registration is required of all state contractors. Proposers need not be registered with the state to make a proposal. However, all service providers with whom the state of Tennessee contracts must register through the Department of Finance and Administration *Service Provider Registry System* (SPRS) prior to contract approval. Any unregistered service provider must simply file a completed registration with the State prior to the final approval of a contract.

- 7.1.1 The SPRS is intended to foster the state's use of minority and small businesses and promote competition in service contracting. Through the system, state agencies will have access to ownership and service information about potential service providers. For more information, visit the SPRS Internet site at <http://www.state.tn.us/finance/rds/ocr/sprs.html> or direct questions about SPRS registration to:

Department of Finance and Administration
Office of Contracts Review
12th Floor, William R. Snodgrass Tennessee Tower
Nashville, TN 37243-1700
(615) 741-7662

- 7.1.2 This RFP details SPRS registration information only as a contract requirement notice. SPRS registrations should not be submitted with proposal materials. SPRS registration information will not be considered in the evaluation process pursuant to this RFP.

- 7.1.3 If a Proposer fails to register with the state as a service provider as required by the Department of Finance and Administration within 14 days of final contract negotiations, the State may determine, at its sole discretion, that the Proposer is nonresponsive to the terms of this RFP.

7.2 Contract Approval

The RFP and the contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in the apparent best evaluated Proposer or any vendor. Contract award and State obligations pursuant thereto shall commence only after the contract is signed by the Contractor and the head of the procuring state agency and after the contract is signed by all other State officials as required by State laws and regulations to establish a legally binding contract.

7.3 Contract Payments

Contract payments shall be made in accordance with the Payment Terms and Conditions provision of the final contract.

No payment shall be made until the contract is approved as required by State laws and regulations. Under no conditions shall the State be liable for payment of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before the contract start date specified by the contract or before contract approval by State officials as required by applicable statutes and rules of the State of Tennessee.

7.4 RFP and Proposal Incorporated into Final Contract

This RFP and the successful proposal shall be incorporated into the final contract.

7.5 Contract Monitoring

The Contractor shall be responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and acceptance by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. At reasonable times, the State may inspect those areas of the Contractor's place of business that are related to the performance of the contract. If the State requires such an inspection, the Contractor shall provide reasonable access and assistance.

7.6 Contract Amendment

During the course of this contract, the State may request the Contractor to perform additional work for which the Contractor would be compensated. That work shall be within the general scope of this RFP. In such instances, the State shall provide the Contractor a written description of the additional work, and the Contractor shall submit a time schedule for accomplishing the additional work and a price for the additional work based on the rates included in the Contractor's Proposal to this RFP. If the State and the Contractor reach an agreement regarding the work and associated compensation, said agreement shall become effective by means of a contract amendment. Any such amendment requiring additional work must be mutually agreed upon by the parties and signed by the Contractor and the head of the procuring state agency and must be approved by other State officials as required by State laws and regulations. The Contractor shall not commence additional work until the State has issued a written contract amendment and secured all required approvals.

The *pro forma* contract (provided in the following pages) contains capitalized and bracketed items that shall be replaced with appropriate information in the final contract.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
[CONTRACTOR NAME]**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the "Contractor," is for the provision of Data Entry Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]. The Contractor's address is:

[ADDRESS]

The Contractor's place of incorporation or organization is [STATE OF ORGANIZATION].

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide data entry services to the various agencies and departments of the State of Tennessee as designated by the Deputy Commissioner, Chief Information Officer or his designees in the Office for Information Resources (OIR) of the Department of Finance and Administration. The Contractor will not perform any work against this contract without this approval. All invoices for work completed will be sent directly to the benefiting agency or department for payment and reference their budget code request number taken from their document of authorization and designate the contract number.
- A.2. The Contractor agrees to verify all data and to maintain sufficient quality assurance practices to assure 99.5 percent accuracy on the verified data.
- A.3. The Contractor shall provide OIR with monthly statements indicating any billings outstanding after sixty (60) days.
- A.4. The Contractor shall make all required trips to the individual agencies to obtain instructions on the individual jobs to meet the data entry/keying requirements for an agency.
- A.5. The Contractor shall provide seven (7) days processing time from pick up to return.
- A.6. The Contractor shall provide pick up and delivery as required, but not to exceed twice-a-week.
- A.7. The Contractor shall provide output on a medium agreeable to both parties but as a minimum on compact disk in ASCII code and with standard labels. Other arrangements agreed to shall not be at an additional cost.

- A.8. The Contractor shall maintain control, security, and confidentiality of documents, data, and keyed results.
- A.9. Non-keyed fields will not be considered by the Contractor as keystrokes for charges and verification of keystrokes.
- A.10. The Contractor shall return the records and documents of the various State agencies in the same order as originally tendered.
- A.11. For data entry/keying specific to the Division of Vital Records of the Department of Health, the following shall apply to the Contractor:
- A.11.1. Key and verify all Vital Records documents (birth, marriage, and divorce certificates, and induced termination of pregnancy reports) and transmit the electronic data to the Office of Information Resources (OIR) mainframe or designated server within three (3) working days of receipt. A backup tape shall be retained by the Contractor for a period of ninety (90) days. The Contractor will return the source documents to the Department of Health on the next scheduled pickup date after the electronic transmission.
- A.11.2. If a breach of confidentiality is suspected, the Contractor shall notify the Department of Health designated contact person immediately and take appropriate action to protect all documents.
- A.11.3. In the event that safety or weather related circumstances may cause an interruption in service, the Contractor shall notify the Department of Health by 10:00 a.m. local time with plans for resumption of service.
- A.11.4. The Contractor shall not allow persons convicted of crimes involving fraud, embezzlement, or identity theft to participate in the keying, handling, or data transmission of the death, marriage, and divorce certificates or the induced termination of pregnancy records.
- A.11.5. The Contractor shall require every employee participating in the keying, handling, or data transmission of the death, marriage, and divorce certificates and induced termination of pregnancy records to sign a confidentiality statement provided by the Department of Health which includes an affirmation of awareness and familiarity of the confidentiality policies of the Health Insurance Portability & Accountability Act of 1996 (HIPAA).
- B. CONTRACT TERM:
- B.1. Contract Term. This Contract shall be effective for the period commencing on February 1, 2004, and ending on January 31, 2007. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least sixty (60) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.
- C. PAYMENT TERMS AND CONDITIONS:
- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed [WRITTEN DOLLAR AMOUNT] (\$[NUMBER AMOUNT]). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's

obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	<u>AMOUNT</u>
Unit Rate Per One (1) Keystroke, Year 1	\$(NUMBER AMOUNT]
Unit Rate Per One (1) Keystroke, Year 2	\$(NUMBER AMOUNT]
Unit Rate Per One (1) Keystroke, Year 3	\$(NUMBER AMOUNT]
Unit Rate Per One (1) Keystroke, Optional Year 4	\$(NUMBER AMOUNT]
Unit Rate Per One (1) Keystroke, Optional Year 5	\$(NUMBER AMOUNT]

Year 1 rates per keystroke shall begin on the Contract start date specified in Contract Section B.1. Year 2 and subsequent years' rates shall take effect on the anniversary date of the Contract start date. Years 4 and 5 are at the State's option.

At a minimum, each invoice submitted shall clearly indicate the number of keystrokes, the cost per keystroke specified above, and the total dollar amount that the contractor is invoicing. The keystrokes required for data verification purposes will be included in the total number of keystrokes counted.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to

those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.

- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Rose Wathen, Technology Financial Manager, Office for Information Resources
State of Tennessee, Department of Finance & Administration
16th Floor, Tennessee Tower
312 8th Avenue North
Nashville, TN 37247
(615) 741-5135 (615) 532-0471 *fax*

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]
[CONTRACTOR NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon

receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

- E.5. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.6. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

- E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.8. HIPAA Compliance. Contractor warrants to the State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract. Contractor warrants that it will cooperate with the State in the course of performance of the contract so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to business associate agreements.
- E.9. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.10. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.
- In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.
- E.11. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

IN WITNESS WHEREOF:

[CONTRACTOR LEGAL ENTITY NAME]:

[NAME AND TITLE]

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

CERTIFICATION OF COMPLIANCE

RFP # 317.03-110

Proposer Name

By indication of the authorized signature below, the Proposer does hereby make certification and assurance of the Proposer's compliance with:

- a) the laws of the State of Tennessee;
- b) Title VI of the federal Civil Rights Act of 1964;
- c) Title IX of the federal Education Amendments Act of 1972;
- d) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- e) the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- f) the condition that the submitted proposal was independently arrived at, without collusion, under penalty of perjury; and,
- g) the condition that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the Procurement under this RFP.

Proposer Signature

Date

COST PROPOSAL FORMAT

RFP # 317.03-110

 Proposer Name
NOTICE TO PROPOSER:

The Proposer shall indicate below the offered price for providing all services proposed including all services as defined in the *pro forma* contract Scope of Services of the subject RFP. This Cost Proposal must specifically record below the exact cost amount(s) proposed in the appropriate space(s) as required herein. Said cost proposed must incorporate all cost for the proposed scope of services for the total contract period.

The Cost Proposal shall detail only the cost proposed as required, and shall not detail any other rates, amounts, or information. It shall not detail any text that could be construed as a qualification of the cost proposed. If the Proposer fails to specify the Cost Proposal as required, the State shall determine the proposal to be nonresponsive and reject it.

The proposer must sign and date the Cost Proposal.

Cost Proposal Instructions/Requirements:

In the "Enter Cost Below" column, the Contractor must enter a single rate per one (1) keystroke, which will be effective for the given year. The Proposer must enter a rate in each of the five (5) years; the Proposer must not leave any cost cells blank. Failure to enter a rate for each of the five years will render the Cost Proposal non-responsive, and the Proposal will be disqualified.

The RFP Coordinator will sum the rates for all five years to derive the "Total Proposed Cost" for evaluation purposes.

COST PER KEYSTROKE	YEAR	ENTER COST BELOW
Unit Rate Per <u>One (1)</u> Keystroke	Year 1	
Unit Rate Per <u>One (1)</u> Keystroke	Year 2	
Unit Rate Per <u>One (1)</u> Keystroke	Year 3	
Unit Rate Per <u>One (1)</u> Keystroke, Optional Year 4	Year 4	
Unit Rate Per <u>One (1)</u> Keystroke, Optional Year 5	Year 5	
TOTAL PROPOSED COST		(For State Use Only)

SEE NEXT PAGE FOR REQUIRED SIGNATURE AND DATE.

The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least ninety (90) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the State.

Proposer Signature

Date

TECHNICAL PROPOSAL EVALUATION FORMAT

RFP # 317.03-110

Proposer Name

Evaluator

Date

PROPOSAL EVALUATIONS CATEGORY (AND RELATED CRITERIA)	SCORE
<u>General Proposer Qualifications and Experience (Maximum Points: 35)</u> <ul style="list-style-type: none"> - vendor credentials - Proposer's background including an organizational history - years in business - how long Proposer has been performing the services required by this RFP - location of offices - number of employees, longevity, and client base - whether there have been any mergers, acquisitions, or sales of the Proposer company in the last ten years - statement as to form of business (<i>i.e.</i>, sole proprietor, corporation, partnership, etc) - whether the Proposer or any of the Proposer's employees, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony - pending litigation against the Proposer - bankruptcy or insolvency proceedings - organizational chart highlighting key personnel assigned to accomplish the work called for in this RFP - proposed project team, members, and organizational structure - customer references for similar projects representing both the three largest accounts currently serviced by the vendor and three completed projects - performance of current contractual relationships with the State of Tennessee or those completed within the previous five year period - commitment to diversity as represented by business strategy, relationships, and workforce 	
<u>Technical Approach (Maximum Points: 30)</u> <ul style="list-style-type: none"> - vendor's understanding of the requirements of the project and the project schedule - how the Proposer will complete the scope of services as required - how the Proposer will manage the project and ensure completion of the scope of services as required 	
TOTAL TECHNICAL PROPOSAL SCORE:	

COST PROPOSAL EVALUATION FORMAT

RFP # 317.03-110

Proposer Name

RFP Coordinator

Date

Proposers shall propose costs as described in RFP Section 5.3 and RFP Attachment 9.2. Costs will be proposed for each of five (5) years, which the RFP coordinator will sum to derive the "Total Proposed Cost."

PROPOSED COST FOR EVALUATION:	["TOTAL PROPOSED COST" -- DERIVED FROM SUBJECT COST PROPOSAL]
--------------------------------------	--

The RFP Coordinator shall use the proposed cost for evaluation amount derived from cost proposals and the following formula to calculate the **SCORE** for the subject cost proposal (calculations shall result in numbers rounded to two decimal places).

$$\frac{\text{lowest proposed cost for evaluation}}{\text{proposed cost for evaluation being evaluated}} \times \text{maximum cost points} = \text{SCORE of cost proposal being evaluated}$$

1. Lowest total proposed cost amount from <u>all</u> proposals:	
2. The total proposed cost for <u>this</u> proposal:	
3. The amount calculated by dividing the amount in row #1 by the amount in row #2:	
4. The maximum number of points that shall be awarded for the Cost Proposal category:	35
5. COST PROPOSAL SCORE -- the product calculated by multiplying the amount in row #3 by the number in row #4:	

PROPOSAL SCORE SUMMARY MATRIX
RFP # 317.03-110

RFP Coordinator

Date

	[PROPOSER NAME]		[PROPOSER NAME]		[PROPOSER NAME]	
QUALIFICATIONS AND EXPERIENCE Maximum Points: 35						
[EVALUATOR NAME]						
[EVALUATOR NAME]						
[EVALUATOR NAME]						
[EVALUATOR NAME]						
[EVALUATOR NAME]						
AVERAGE SCORE:			AVERAGE SCORE:		AVERAGE SCORE:	
TECHNICAL APPROACH Maximum Points: 30						
[EVALUATOR NAME]						
[EVALUATOR NAME]						
[EVALUATOR NAME]						
[EVALUATOR NAME]						
[EVALUATOR NAME]						
AVERAGE SCORE:			AVERAGE SCORE:		AVERAGE SCORE:	
COST PROPOSAL Maximum Points: 35						
SCORE:			SCORE:		SCORE:	
PROPOSAL SCORE (Maximum 100 Points)						
TOTAL SCORE:			TOTAL SCORE:		TOTAL SCORE:	

NOTE: Use as many sheets as necessary to summarize scores for all Proposers evaluated.



**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE FOR INFORMATION RESOURCES
312 EIGHTH AVENUE NORTH
SUITE 1600, TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243-0288
(615) 741-3700
FAX (615) 532-0471**

**DAVE GOETZ
COMMISSIONER**

SAMPLE EVALUATION NOTICE

[DATE]

[NAME]
[COMPANY NAME]
[STREET ADDRESS]
[CITY, STATE, ZIP]

Dear [NAME],

Thank you for your proposal in response to RFP number 317.03-110. The state has completed its evaluation of proposals in response to this Request for Proposals, and the subject procurement records are open for public inspection.

[NAME OF APPARENT BEST EVALUATED PROPOSER] is the apparent best evaluated proposer that the state will consider for contract award. This notice is NOT an acceptance of any offer, and the state retains the right to reject any proposal.

In accordance with the subject RFP and state law, this notice shall NOT create rights, interests, or claims of entitlement in the apparent best evaluated proposer or any vendor. No vendor shall acquire any such right unless and until a contract is fully signed by all appropriate state officials.

We appreciate your interest in providing services to the State of Tennessee and hope that you will respond to future Requests for Proposals.

Sincerely,

M. D. Goetz, Jr.
Commissioner

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter “Agreement”) is between **COVERED ENTITY NAME** (hereinafter “Covered Entity”) and **BUSINESS ASSOCIATE NAME** (hereinafter “Business Associate”). Covered Entity and Business Associate may be referred to herein individually as “Party” or collectively as “Parties.”

BACKGROUND

Covered Entity acknowledges that it is subject to the Privacy Rule (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191.

Business Associate provides services or goods to Covered Entity pursuant to one or more contractual relationships detailed below and hereinafter referred to as “Service Contracts”.

LIST OF CONTRACTS AFFECTED BY HIPAA REQUIREMENTS

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information (defined in Section 1.7 below). Said Service Contracts are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A and E, which require Covered Entity to have a written contract with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard “Protected Health Information” and, therefore, make this Agreement.

1. DEFINITIONS

- 1.1. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.
- 1.2. “Designated Record Set” shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.3. “Health Care Operations” shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.4. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.5. “Privacy Officer” shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.6. “Privacy Rule” shall mean the Standards for Privacy for Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- 1.7. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.8. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1. Business Associate agrees to fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose Protected Health Information other than as permitted or required by this Agreement, Service Contracts, or as Required By Law. In case of any conflict between this Agreement and Service Contracts, this Agreement shall govern.
- 2.2. Business Associate agrees to use appropriate procedural, physical, and electronic safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Said safeguards shall include, but are not limited to, requiring employees to agree to use or disclose Protected Health Information only as permitted or required by this Agreement and taking related disciplinary actions for inappropriate use or disclosure as necessary.
- 2.3. Business Associate shall require any agent, including a subcontractor, to whom it provides Protected Health Information received from, created or received by, Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to Protected Health Information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- 2.5. Business Associate agrees to require its employees, agents, and subcontractors to immediately report, to Business Associate, any use or disclosure of Protected Health Information in violation of this Agreement and to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- 2.6. If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least **WRITTEN NUMBER (NUMBER)** days from Covered Entity notice to provide access to, or deliver such information.
- 2.7. If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least **WRITTEN NUMBER (NUMBER)** days from Covered Entity notice to make an amendment.
- 2.8. Business Associate agrees to make its internal practices, books, and records including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.9. Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of Protected Health Information in accordance with 45 CFR § 164.528.

- 2.10. Business Associate agrees to provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least **WRITTEN NUMBER (NUMBER)** days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the Protected Health Information was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure.
- 2.11. Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of Protected Health Information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.11.1. Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, Protected Health Information shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.11.2. Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.11.3. Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Agreement, to comply with the Privacy Rule's minimum necessary requirements when making any request for Protected Health Information from Covered Entity.
- 2.12. Business Associate agrees to adequately and properly maintain all Protected Health Information received from, or created or received on behalf of, Covered Entity and to document subsequent uses and disclosures of such information by Business Associate as may be deemed necessary and appropriate by the Covered Entity.
- 2.13. If Business Associate receives a request from an Individual for a copy of the individual's Protected Health Information, and the Protected Health Information is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for Protected Health Information in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.14. Business Associate agrees to fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 3.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contracts, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- 3.2. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.

- 3.3. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any Protected Health Information to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality of Protected Health Information and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality of the Protected Health Information is breached.
- 3.4. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(I)(B).

4. OBLIGATIONS OF COVERED ENTITY

- 4.1. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- 4.2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses.
- 4.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of Protected Health Information.

5. PERMISSIBLE REQUESTS BY COVERED ENTITY

- 5.1. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. TERM AND TERMINATION

- 6.1. Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, Section 6.3. below shall apply.
- 6.2. Termination for Cause.
- 6.2.1. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy Rule or this Agreement.
- 6.2.2. Upon Covered Entity's knowledge of a material breach by Business Associate,
- 6.2.2.1. Covered Entity shall, whenever practicable, provide a reasonable opportunity for Business Associate to cure the breach or end the violation.
- 6.2.2.2. If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time

as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and Service Contracts.

- 6.2.2.3. If neither cure nor termination are feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

6.3. Effect of Termination.

- 6.3.1. Except as provided in Section 6.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- 6.3.2. In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is unfeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such Protected Health Information.

7. **MISCELLANEOUS**

- 7.1. Regulatory Reference. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 7.2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy Rule, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- 7.3. Survival. The respective rights and obligations of Business Associate under Section 6.3. of this Agreement shall survive the termination of this Agreement.
- 7.4. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy Rule.
- 7.5. Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:

COVERED ENTITY NAME
NAME AND TITLE
ADDRESS
Telephone: **NUMBER**

BUSINESS ASSOCIATE:

BUSINESS ASSOCIATE NAME
NAME AND TITLE
ADDRESS
Telephone: **NUMBER**

Fax: **NUMBER**

Fax: **NUMBER**

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- 7.6. **Strict Compliance.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
- 7.7. **Severability.** With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 7.8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
- 7.9. **Compensation.** There shall be **no** remuneration for performance under this HIPAA Business Associate Agreement except as specifically provided by, in, and through, contractual relationships referenced herein.

IN WITNESS WHEREOF,

COVERED ENTITY LEGAL ENTITY NAME:

NAME AND TITLE

Date

BUSINESS ASSOCIATE LEGAL ENTITY NAME:

NAME AND TITLE

Date